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HON HAI PRECISION INDUSTRY CO., LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HON HAI PRECISION INDUSTRY CO., LTD.

CASE NO. C-07-cv-06217-PVT

Plaintiff,

V.

**MACROVISION CORPORATION and
MACROVISION LICENSING & HOLDING
B.V.**

Defendants.

**PLAINTIFF'S ADMINISTRATIVE
MOTION FOR FILING UNDER
SEAL;**

**SUPPORTING DECLARATION OF
ROBERT F. MCCUALEY;**

[PROPOSED] ORDER

Date: January 15, 2008
Time: 10:00 a.m.
Place: Courtroom 5, 4th Floor
Judge: Mag. Judge Patricia V. Trumbull

INTRODUCTION

Pursuant to Civil L.R. 79-5, Plaintiff Hon Hai Precision Industry Co., Ltd. (“Hon Hai”) brings this administrative motion for leave to file under seal a motion for preliminary injunction, supporting declarations, and exhibits filed in this action. This action was filed only three days ago and, accordingly, no protective order has been entered in this action.

SUMMARY OF FACTUAL BACKGROUND

Hon Hai is the largest contract manufacturer in the world, having approximately 382,000 employees. Hon Hai is a leading original equipment manufacturer (“OEM”) of consumer electronics for some of the world’s best known brand name companies, including personal computers and other DVD playing products, with annual sales in the United States in the billions of dollars.

Hon Hai's licensor of certain DVD technology, Macrovision, has asserted that Hon Hai is in material breach of its license from Macrovision and has purported to terminate Hon Hai's license. Hon Hai, however, is not in material breach and remains a Macrovision licensee. In contrast, Macrovision has breached the license agreement by, among other things, improperly attempting to terminate and refusing to submit the parties' dispute to alternative dispute resolution as required by the license agreement.

On Friday, December 7, 2007, Hon Hai filed this action requesting preliminary and permanent injunctive relief, including an order compelling Macrovision to cease treating Hon Hai as a non-licensee and to participate in alternative dispute resolution of the parties' dispute (as required by the license). Today, Monday, December 10, 2007, Hon Hai is lodging herewith a motion for preliminary injunction. Hon Hai's motion, supporting declaration, and exhibits contain confidential information of Hon Hai's, including a proprietary, confidential, and trade secret forecast of damages resulting from Macrovision's wrongful actions and a disclosure of Hon Hai's purchases of integrated circuits in 2007. Furthermore, Hon Hai's papers contain information deemed proprietary and a trade secret by the parties, and covered by a confidentiality clause in the parties' license agreement and designated confidential by Macrovision. *See Declaration of Samuel Fu in Support of Plaintiff Hon Hai's Motion for Preliminary Injunction, Ex. A ¶ 12.1*, lodged herewith. Furthermore, Hon Hai is contractually bound to its customers to maintain the parties' dealings and customers' identities as

1 confidential, and some of Hon Hai's customers dealings and identities are identified in its papers.
2 Furthermore, if Hon Hai were to publicly file the above-described information, then Hon Hai would
3 be subject to claims by Macrovision and Hon Hai's customers and suppliers for breach of contract
4 for revealing this confidential information. Accordingly, Hon Hai requests that the Court file said
5 information under seal.

6 If for any reason the Court is inclined to deny Hon Hai's motion to file under seal, then Hon
7 Hai respectfully requests that the Court defer a decision on this motion to file under seal and review
8 the papers *in camera* in deciding Hon Hai's motion for preliminary injunction. That way, the Court
9 will have the information necessary to decide Hon Hai's motion without subjecting Hon Hai to
10 claims of breach of contract. Pending a decision on the motion for preliminary injunction, the Court
11 might further order Hon Hai to publicly file redacted copies of its brief and supporting declaration
12 per Civil L.R. 79-5.

13 **REQUEST TO FILE PAPERS UNDER SEAL**

14 **1. Request to File Portions of Papers Under Seal**

15 Pursuant to Civil L.R. 7-11 and 79-5(c), Hon Hai requests to partially file under seal the
16 following documents:

- 17
- 18 • Plaintiff Hon Hai's Notice of Motion and Memorandum of Points and Authorities in
19 Support of Motion for Preliminary Injunction
 - 20 • Declaration of Samuel Fu in Support of Plaintiff Hon Hai's Motion for Preliminary
Injunction

21 These documents are being submitted for partial filing under seal because they contain
22 information deemed proprietary and a trade secret by the parties and subject to a confidentiality
23 clause in the parties' license agreement. As required by Civil L.R. 79-5(c), Hon Hai is lodging
24 herewith CONFIDENTIAL, HIGHLIGHTED versions of these documents in which the confidential
25 information is highlighted for the Court's review, and REDACTED PUBLIC versions of these
26 documents within which the confidential information has been redacted.

1 **2. Request to File Entire Documents Under Seal**

2 Pursuant to Civil L.R. 7-11 and 79-5(b), Hon Hai requests that the Court file the following
3 documents under seal in their entireties:

- 4 • Exhibits A, B, C, D, E, F, G, H, and J to the Declaration of Samuel Fu in Support of
5 Plaintiff Hon Hai's Motion for Preliminary Injunction

6 These exhibits are confidential and Hon Hai is obligated to maintain their confidentiality
7 pursuant to its license agreement with Macrovision and its contractual obligations to its customers to
8 maintain the parties' dealings and customer identities as confidential. If Hon Hai were to publicly
9 file the above-described information, then Hon Hai would be subject to claims by Macrovision and
10 Hon Hai's customers and suppliers for breach of contract for revealing this confidential information.

11 Accordingly, Hon Hai requests that the Court file said information under seal.

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SUPPORTING DECLARATION OF ROBERT F. McCUALEY

I, Robert F. McCauley, declare:

1. I am a partner with Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., counsel of record for Hon Hai in this case. I am over the age of 18 years. The matters stated herein are true based on my personal knowledge and to the best of my information and belief.

2. The factual representations made above in the statement of facts and request to file under seal are true to the best of my knowledge and belief.

3. This action was filed three days ago and there are no counsel of record for defendants. Accordingly, I do not presently have any opposing counsel with whom to discuss potentially stipulating to this request to file under seal.

I declare by my signature below under penalty of perjury under the laws of the United States that the statements made herein are true to the best of my knowledge and belief, and this declaration was signed on December 10, 2007, in Palo Alto, California.

Dated: December 10, 2007

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: /s/
Robert F. McCauley
Attorneys for Plaintiff
Hon Hai Precision Industry Co., Ltd.

[PROPOSED] ORDER

For good cause shown, Plaintiff Hon Hai's motion to file under seal is granted. The Clerk is ordered to file under seal:

1. The HIGHLIGHTED version of Plaintiff Hon Hai's Notice of Motion and Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction; and
 2. The HIGHLIGHTED version of the Declaration of Samuel Fu in Support of Plaintiff Hon Hai's Motion for Preliminary Injunction, and Exhibits A, B, C, D, E, F, G, H, and J thereto.

[Alternative Proposed Order: The Court will defer a decision on this motion to file under seal and review the papers *in camera* in deciding Hon Hai's motion for preliminary injunction.]

IT IS SO ORDERED.

Dated:

United States District Judge